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Nationality of natural persons in relation to the succession of States

Nationality of natural persons in relation to the succession of States

Note by the Secretariat

Summary

The present note contains the comments of 15 Governments regarding nationality of natural persons in relation to the succession of States, submitted pursuant to General Assembly resolution 63/118.

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I. Introduction

1. At its fifty-first session in 1999, the International Law Commission adopted draft articles on nationality of natural persons in relation to the succession of States, and recommended their adoption by the General Assembly in the form of a declaration.

2. In paragraph 3 of its resolution 54/112, the General Assembly invited Governments to submit comments and observations on the question of a convention on nationality of natural persons in relation to the succession of States, with a view to the Assembly considering the elaboration of such a convention at a future session. The text of the articles of the convention was annexed to Assembly resolution 55/153 and, in paragraphs 3 of that resolution, the Assembly invited Governments to take into account the provisions contained in the articles in dealing with issues of nationality of natural persons in relation to the succession of States. Comments and observations received from Governments in response to that invitation are contained in documents A/59/180 and Add.1 and 2.

3. In paragraph 3 of its resolution 59/34, the General Assembly invited Governments to submit comments concerning the advisability of elaborating a legal instrument on the question of nationality of natural persons in relation to the succession of States, including the avoidance of statelessness as a result of a succession of States. Comments and observations received from Governments in response to that invitation are contained in document A/63/113.

4. The invitation contained in paragraph 3 of resolution 59/34 was reiterated in paragraph 3 of General Assembly resolution 63/118. Furthermore, in paragraph 4 of the latter resolution, the General Assembly decided to include in the provisional agenda of its sixty-sixth session the item entitled "Nationality of natural persons in relation to the succession of States", with the aim of examining the subject, including the question of the form that might be given to the draft articles.

5. As of 25 July 2011, replies to the invitation contained in resolution 63/118 had been received from the following States: Suriname (dated 9 February 2009); Kuwait (dated 29 April 2009 and 31 July 2009); Belarus (dated 8 June 2009); Bolivarian Republic of Venezuela (dated 23 June 2009); Yemen (dated 25 June 2009); Philippines (dated 24 February 2010); Uruguay (dated 13 January 2011); Czech Republic (dated 28 January 2011); Austria (dated 16 February 2011); Portugal (dated 22 February 2011); Mexico (dated 25 February 2011); Slovenia (dated 25 February 2011); Bulgaria (dated 21 March 2011); Kenya (dated 29 March 2011); and Iraq (dated 20 April 2011). These replies are contained in section II below, organized by topic.

II. Comments received from Governments

A. General comments

1. General remarks

Belarus

[Original: Russian]

In regard to the wording of the draft articles, we note the following. Since the conclusion, in 1930, of the Hague Convention on Certain Questions relating to the Conflict of Nationality Laws,[1] the number of international instruments containing provisions on nationality has increased significantly and there is now an array of disparate regulations with varying legal force and composition of the parties thereto.

...

[...] we believe that in regulating issues of nationality of natural persons in relation to the succession of States, international treaties concluded between States concerned by the process of succession should take priority. In that connection, we propose adding articles to the draft establishing that, in cases of succession of States, issues of the nationality of persons concerned may be governed by international treaties concluded between the States concerned. At the same time, such international treaties may establish other rules than those provided for in the draft articles.

Kenya

[Original: English]

Succession of States is a theory in international law regarding the recognition and acceptance of newly created States by other States based on a perceived historical relationship the new State has with a prior State.

The United Nations Universal Declaration of Human Rights was approved on 10 December 1948. Of significance, the Declaration, in article 15, provided that:

(1) Everyone has the right to a nationality;

(2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

The Convention relating to the Status of Stateless Persons, of 28 September 1954,[2] entered into force on 6 June 1960 and States parties to the Convention undertake to accord to stateless persons the same treatment as is accorded to aliens generally. Stateless persons are to be treated no less favourably than nationals with respect to housing, public education, public relief and participation in wages and employment, among others.

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[1] See League of Nations, *Treaty Series*, vol. 179.

[2] United Nations, *Treaty Series*, vol. 360.

The Convention on the Reduction of Statelessness of 30 August 1961[3] entered into force on 13 December 1975 and works to create norms and to codify and confirm certain presumptions and principles of customary international law such as:

- States have absolute sovereignty to confer their nationality on any person for any reason;
- Otherwise stateless persons may take the nationality of the place of their birth or the place where they were found.

States parties to the Convention confirmed that they shall grant their nationalities to persons otherwise stateless that are born in their territories. For the purpose of assigning nationality, a person found within the territory of a State party to the Convention shall be considered to have been born in the said State and the parents shall also be presumed to have been nationals of that State.

As of 11 December 2010, only 37 States had signed and ratified the Convention on the Reduction of Statelessness. As of 1 October 2008, only 63 States parties had signed and ratified the convention Relating to the Status of Stateless Persons. The conventions have not received universal support.

...

Kenya is not a signatory to the Conventions relating to statelessness, these being the Convention Relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness. Kenya is desirous of ratifying these two Conventions and will do so in due time, considering the changes in the requirements for ratification under the new Constitution of Kenya.

Kuwait

[Original: Arabic]

Having considered General Assembly resolution 52/156, entitled "Report of the International Law Commission on the work of its forty-ninth session", General Assembly resolution 55/153 on nationality of natural persons in relation to the succession of States, and document A/CN.4/493, containing comments and observations of Governments on nationality in relation to the succession of States, and having studied the memorandum by the Secretariat dated 8 March 1999 (A/CN.4/497) which contains the general observations submitted by States on that matter as well as the provisions of the declaration that was recommended for adoption by the Assembly in the form of an international declaration, and having considered the report and recommendations of the committee of experts and representatives of the Arab States to coordinate the Arab points of view in that connection, which were issued on 15 November 2006, and having reviewed the memorandums prepared by the ministry on that matter, the comments of the State of Kuwait are as follows:

[3] Ibid., vol. 989.

1. In relation to General Assembly resolution 55/153 on nationality of natural persons in relation to the succession of States

The resolution sets forth the provisions of the declaration in 26 articles, divided into two parts, part I, dealing with general provisions, and part II, divided into four sections, with specific categories of succession of States.

The resolution seeks to establish a general principle, namely the taking of appropriate measures to try to ensure that persons having the nationality of the predecessor State do not become stateless as a consequence of succession.

The resolution recommends that persons habitually resident in the successor territory should be presumed to acquire the nationality of the successor State.

The resolution requires every State to enact legislation on nationality, the provisions of which would deal with the acquisition of nationality in relation to the succession of States.

The resolution affirms that persons concerned are not entitled to the nationality of the successor State if they have their habitual residence in another State and have the nationality of that State.

The resolution also specifies the right of the successor State not to attribute its nationality to persons concerned if they have the nationality of another State until such time as they have renounced such nationality.

The resolution also entitles the predecessor State to make it a condition that persons concerned shall lose its nationality if they voluntarily acquire the nationality of a successor State.

The resolution encourages respect for the will of persons concerned and their freedom to opt for the nationality they wish to acquire.

The resolution also provides for the right of children born after the date of succession to acquire the nationality of the State in whose territory they were born.

The resolution allows the return of persons concerned to their place of residence if they have left it because of compelling circumstances outside their control.

The resolution prohibits a number of actions, including discrimination against persons concerned and the taking of arbitrary decisions concerning them.

The resolution deals with the obligation of the successor State to attribute its nationality to persons concerned who are resident in a part of one State (the predecessor State) which is annexed to the territory of another State (the successor State).

The resolution refers to the federation or unification of States, making it a right of the successor State (a unit of two States that have merged) to attribute its nationality to all persons who had the nationality of the predecessor State.

The resolution contains provisions regulating nationality in the case where a State is dissolved or ceases to exist and forms two or more successor States. It also regulates the right of option of persons concerned who are qualified to acquire the nationality of two or more successor States that have had their origin in a predecessor State.

The resolution considers a case in which a part of the territory of a State is separated and becomes independent, forming one or two successor States, and indicates that, in such a case, it is for both the States, the predecessor State and the successor State, to grant the right of option to all persons concerned to acquire the nationality of either or both those States.

2. *Recommendations and observations of the committee of experts and representatives of the Arab States to coordinate positions for study of the declaration on the nationality of natural persons in relation to the succession of States*

The declaration was referred for study to a committee of experts and representatives of the Arab States to coordinate Arab positions on the international conferences and conventions emanating from the Council of Arab Ministers of Justice on the basis of resolution No. 6641, adopted on 4 March 2006 by the League of Arab States at the ministerial level at its one hundred and twenty-fifth session, for the purpose of coordinating the positions of the Arab States and producing an Arab approach on this matter.

The committee met and was attended by the representatives of a number of Arab States, including the State of Kuwait, and reviewed the draft declaration. After exhaustive study, the committee concluded its work and made a number of observations and recommendations. [...]

Philippines

[Original: English]

The Philippines interposes no objection to the provisions of the draft articles on nationality of natural persons in relation to the succession of States.

See also sections II.A.2 and II.A.3 below.

Portugal

[Original: English]

Portugal commends the International Law Commission for its work in preparing a set of draft articles regulating such a complex subject matter. The Universal Declaration of Human Rights embodies the fundamental principle that everyone has the right to a nationality. Bearing this in mind, the draft articles pursue the important objective of avoiding statelessness in case of State succession.

Nowadays, there is a greater balance between the relevance of the interests of States and those of individuals. Consequently, the practical interests of States regarding the succession process have to be soundly balanced with the rights and expectations of individuals regarding their nationality.

It is widely acknowledged that the attribution of nationality belongs to the realm of sovereign prerogatives of States. However, such prerogative must be exercised within the limits imposed by international law. Hence, without denying the primary competence of States to attribute nationality, it is important to identify those limits, especially in the complex situation of succession of States. Portugal is of the opinion that the draft articles do so in an adequate manner.

Slovenia

[Original: English]

Settling the issue of nationality of natural persons in the event of succession of States became highly relevant after the dissolution of the former Socialist Federal Republic of Yugoslavia, the former Czechoslovakia and the former Soviet Union. After the fall of the Berlin wall, the States were searching for a proper solution to these questions within their domestic legislation, as there were no legally binding international instruments providing for concrete standards.

In the case of Slovenia, which became a sovereign and independent State in 1991, the internal legislation provided for the legal protection of natural persons, who — as a consequence of the dissolution of the former Socialist Federal Republic of Yugoslavia — resided on the Slovenian territory, thus preventing statelessness. This is in accordance with the basic principle of the European Convention on Nationality[4] adopted six years later.

The right to citizenship is a fundamental human right, one recognized in many international legal instruments (e.g. in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights of 16 December 1966[5] and the Convention on the Rights of the Child of 20 November 1989[6]).

Uruguay

[Original: Spanish]

Uruguay, having taken note of the annex [to resolution 55/153] containing draft articles on the nationality of natural persons in relation to the succession of States, has no further comments to submit thereon, as it considers it advisable to retain that text, which compiles the relevant existing standards.

The provisions contained in the annexed text cover all the potential scenarios, including the possibility of an option where applicable and respect for the will of persons concerned.

In addition, the text seeks to protect nationality so as to prevent statelessness in all situations.

All in all, we welcome the annexed text as a document that governs the difficult situations affecting persons when States of which they are nationals dissolve and form new States or when they unite with others, thereby necessitating a change in the nationalities of their original nationals.

The only comment we would like to submit is in reference to article 17 on procedures relating to nationality issues. [*... see comments below in section II.B.II*]

Venezuela (Bolivarian Republic of)

[Original: Spanish]

The aforementioned draft articles strike the correct balance between the right of States to regulate the acquisition and loss of nationality by their citizens in

[4] Council of Europe Treaty Series No. 166. Signed on 6 November 1997.

[5] United Nations, *Treaty Series*, vol. 999.

[6] Ibid., vol. 1577.

accordance with internal law, and the human right to a nationality that has been repeatedly enshrined in international law, starting with the Universal Declaration of Human Rights itself.

Both public international law and case law recognize that nationality is governed by internal law. Therefore, it is for each State to determine under its own law who are its nationals, within the limits set by international law. This is expressly acknowledged in the second preambular paragraph of the draft articles prepared by the International Law Commission and is developed in the operative paragraphs thereof.

For these reasons, the Bolivarian Republic of Venezuela has no substantive objections to the draft articles in question because they take into account the right of States to self-determination while respecting every individual's human right to a nationality. It notes that the draft articles limit State action only insofar as it would result in statelessness.

The legal treatment of nationality and citizenship is established in title III, chapter II, of the Constitution of the Bolivarian Republic of Venezuela, which covers both the acquisition and the loss of either link between the individual and the State. Nationality and citizenship are further described in the Nationality and Citizenship Act of July 2004. Thus, the broad treatment (*jus solis* and *jus sanguinis*) of this issue in the Constitution and the human rights guarantees contained in that instrument make it highly unlikely under Venezuelan law that a loss of nationality could lead to statelessness and legally impossible that discrimination of any kind could result in the revocation of nationality.

Indeed, article 35 of the Constitution of the Bolivarian Republic of Venezuela establishes that Venezuelans by birth may not be deprived of their nationality under any circumstances.

There is only one case in which naturalized Venezuelans can lose their citizenship, making statelessness a possibility because it is not conditional (either through revocation or renunciation) on the acquisition of another nationality; this case is covered by article 35 of the Constitution, which, like article 36 of the Nationality and Citizenship Act, establishes that Venezuelan nationality acquired by naturalization may be revoked only through a final judicial decision.

However, this legal provision is only applied in exceptional circumstances: the Nationality and Citizenship Act states that it may be applied only in respect of individuals who have been convicted of offences against security, sovereignty or the Constitution, or who have acquired nationality fraudulently or with intent to evade enforcement of the laws of another State. It should be noted that these provisions are consistent with the international law currently in force, and particularly with article 8 of the Convention on the Reduction of Statelessness of 30 August 1961,[3] which allows revocation of nationality to cause statelessness if certain conditions are met and if the State formulates a declaration upon accession to the Convention.

2. Scope of the articles

Kuwait

[Original: Arabic]

Some views were expressed [in the Committee of experts and representatives of the Arab States to coordinate positions for study of the declaration on the nationality of natural persons in relation to the succession of States] recommending the inclusion in the convention of provisions dealing with the annexation or absorption of an existing State by another existing State.

...

International succession is defined — doctrinally and internationally — as the designation of an international successor which may be partial, as in the case of the loss of only part of the territory of a State while the rest of the predecessor State remains, and may be total and take the form of the total disappearance of the legal personality of the predecessor State.

It is to be noted that the declaration does not deal with instances of total succession which occurs in cases where the territory of an existing State is annexed or absorbed by another existing State, a situation in which the legal and international personality of the first State is terminated. Consequently, the provisions of the declaration lack any legal regulation of the problems of nationality in such instances.

The effects of international succession are numerous and include the continued implementation of previously concluded treaties and conventions, and matters connected with aspects of the payment of public debts, and the legal regime applied in that connection to the region that has become the successor. However, the declaration under discussion addresses the effects of international succession on persons who previously had the nationality of the predecessor State.

Philippines

[Original: English]

The draft articles do not cover persons who are in the territory of the predecessor or successor State but are stateless at the time of succession. Inclusion of these stateless persons in the purview of the draft articles may reinforce the "right of everyone to a nationality", as embodied in the Universal Declaration of Human Rights.

3. Clarification of terminology

Philippines

[Original: English]

Clarification of the term "habitual residence", which is repeatedly used in the draft articles, may be useful since there is no definition of this term, or any standard of reference that could be used to avoid ambiguity or misinterpretation.

Venezuela (Bolivarian Republic of)

[Original: Spanish]

Unclear language in the draft, such as "appropriate legal connection" or "effective link" between the State and the person, must be clarified. Similarly, the term "habitual residence" should be explained.

B. Comments on the preamble and on specific articles

1. Preamble

Venezuela (Bolivarian Republic of)

[Original: Spanish]

It is suggested that the preamble should make mention of other instruments and conventions that deal with the topic of nationality and statelessness, such as the Declaration of the Rights of the Child of 20 November 1959,[7] the International Convention on the Elimination of All Forms of Racial Discrimination of 7 March 1966[8] and the Convention on the Elimination of All Forms of Discrimination against Women of 18 December 1979.[9]

2. Article 1. Right to a nationality

Belarus

[Original: Russian]

In [the Russian text of] article 1 of the draft articles of the International Law Commission on nationality of natural persons in relation to the succession of States, for the purpose of terminological consistency we suggest replacing the words "on the date of" with the words "at the moment of", since the term "moment of the succession of States" is introduced in article 2 and is subsequently used throughout the [Russian] text of the draft articles.

Iraq

[Original: Arabic]

It is necessary to define and clarify what is meant by the phrase "the States concerned", as used in article 1.

3. Article 2. Use of terms

Iraq

[Original: Arabic]

It is necessary to clarify what is meant by the phrase "responsibility for the international relations of territory" in draft article 2 (*a*). International relations are between States.

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[7] General Assembly resolution 1386 (XIV) of 20 November 1959.

[8] United Nations, *Treaty Series*, vol. 660.

[9] Ibid., vol. 1249.

Kenya

[Original: English]

Kenya proposed that the term "statelessness" be clearly defined under article 2.[10]

Kuwait

[Original: Arabic]

Kuwait was in favour of approving the retention of the definition of "succession of States" in article 2 of the declaration on the grounds that it reflected the understanding of the term in international law. However, the committee [of experts and representatives of the Arab States] proposed an amendment to the article to read as follows: "'Succession of States' means the replacement of one State by another in the responsibility for the nationality of natural persons in the international relations of territory".[11]

4. Article 6. Legislation on nationality and other connected issues

Iraq

[Original: Arabic]

Draft article 6 on legislation on nationality and other connected issues seems to entail intervention in the internal affairs of States with regard to the granting of nationality. Draft article 6 should be redrafted in a way that ensures non-interference in the internal affairs of States with regard to the granting of nationality, given the importance of that issue.

Kenya

[Original: English]

Kenya proposed that [...] article 6 on legislation on nationality and other connected issues provide that its provisions shall not prejudice the internal laws of the contracting States that offer more favourable rights to stateless persons.[12]

5. Article 8. Persons concerned having their habitual residence in another State

Belarus

[Original: Russian]

Paragraph 1 of article 8 might appropriately be phrased as follows: "A successor State does not have the obligation to attribute its nationality to persons concerned who have the nationality of any other State." We believe that, as it now stands, the language of that paragraph permits attribution by the successor State of its nationality to persons who have their permanent residence in the territory of the successor State and who have the nationality of another State. Questions of dual nationality in international law remain somewhat debatable (and the Republic of Belarus, in particular, views dual nationality as generally undesirable), despite

[10] See the comments of Kenya in document A/63/113, section II.B.2.

[11] See the general comments of Kuwait in section II.A.1 above.

[12] See the comments of Kenya in document A/63/113, section II.B.4.

gradual acceptance of that legal situation. In this connection, it would seem that, for the purposes of the draft articles (minimization of cases of statelessness resulting from the succession of States), the language proposed by Belarus is adequate.

6. Article 9. Renunciation of the nationality of another State as a condition for attribution of nationality

Kenya

[Original: English]

[...] Kenya was also of the position that article 9 [...] would render it impossible for natural persons to acquire dual nationality.[13] This is opposed to the provisions of article 16 of the Constitution of Kenya that provide for dual nationality.

7. Article 11. Respect for the will of persons concerned

Iraq

[Original: Arabic]

What is meant by the term "qualified" person in draft article 11 must also be specified. The term is not defined, nor are the qualifications that such a person is required to possess.

Kuwait

[Original: Arabic]

The State of Kuwait proposes adding the following sentence to paragraph 1 of article 11: "However, respect for the will of such persons shall be conditional upon their meeting any requirements determined by the States concerned."

8. Article 13. Child born after the succession of States

Iraq

[Original: Arabic]

Draft article 13 provides that children born after the date of the succession of States have the right to the nationality of the States concerned on whose territory they were born. However, most States do not grant nationality solely on the basis of birth, but take into consideration certain other factors, such as residence or marriage.

Kuwait

[Original: Arabic]

With respect to article 13, Kuwait requested the addition of the following: "... in the framework of the national law of the successor State".

[13] See the comments of Kenya in document A/63/113, section II.B.5.

Venezuela (Bolivarian Republic of)

[Original: Spanish]

It is not clear why *jus solis* was given precedence over *jus sanguinis* in article 13. If the intention is to eliminate or reduce the incidence of statelessness, both criteria, without distinction, should apply to the children of persons affected by the succession of States.

9. Article 15. Non-discrimination

Kenya

[Original: English]

Kenya recalled that it had previously commented on this article.[14]

Venezuela (Bolivarian Republic of)

[Original: Spanish]

It is recommended that the concept of non-discrimination in article 15 should be broadened by including the potential grounds for discrimination, as is done in many international human rights treaties (discrimination on grounds of race, sex, colour, language, social status, religion, political opinion or any other condition or circumstance). It should be noted that although non-exhaustive, specific mention of certain conditions or circumstances, such as those listed above, would strengthen the wording of the article.

10. Article 16. Prohibition of arbitrary decisions concerning nationality issues

Iraq

[Original: Arabic]

Draft article 16 provides that persons concerned shall not be arbitrarily deprived of the nationality of the predecessor State, or arbitrarily denied the right to acquire the nationality of the successor State or any right of option, to which they are entitled in relation to the succession of States. This provision contradicts other provisions in the draft articles which stipulate that, in relation to the succession of States, the person concerned has the nationality of the successor State. The predecessor State therefore cannot not be compelled to maintain the nationality of the person concerned, who would have become resident in the successor State. The successor State must grant him nationality as quickly as possible.

...

There is a contradiction between draft articles 16 and 20 with regard to withdrawal of nationality by the predecessor State. The texts should be harmonized, so that nationality cannot be withdrawn by the predecessor State until the person concerned has been granted nationality by the successor State.

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[14] See the comments of Kenya in document A/63/113, section II.B.8.

11. Article 17. Procedures relating to nationality issues

Kenya

[Original: English]

Kenya recalled that it had previously commented on this article.[15]

Uruguay

[Original: Spanish]

This article does not make clear before which entity such procedures must be carried out, nor does it describe the procedure to follow in cases where States are still discussing the modalities of succession and individuals have no entity to which to submit applications. In addition, the annexed text does not address situations in which the succession of States does not occur by mutual agreement and cases are therefore delayed: in such cases, individuals become hostages of the situation and are left stateless during the process in which State A may have ceased to exist, but State B has yet to be recognized.

12. Article 18. Exchange of information, consultation and negotiation

Kenya

[Original: English]

Kenya recalled that it had previously commented on this article.[16]

13. Article 19. Other States

Belarus

[Original: Russian]

We believe that paragraph 2 of article 19 also requires some refinement. Since the issue of attribution of nationality is exclusively within the domestic jurisdiction of the State concerned, an unconstrained right on the part of any other State "... [to treat] persons concerned ... as nationals of the State concerned" may cause a certain disquiet on the part of the latter. Accordingly, we suggest replacing the words "if such treatment is beneficial to those persons" with the more concrete language "if proper protection of the rights and freedoms of such persons cannot otherwise be guaranteed".

14. Article 20. Attribution of the nationality of the successor State and withdrawal of the nationality of the predecessor State

Iraq

[Original: Arabic]

Draft article 20 contains the phrase "[w]hen part of the territory of a State is transferred ...". The word "transferred" should not be used in the provisions of these draft articles. For the sake of consistency, the terms "separation" or "annexation"

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[15] See the comments of Kenya in document A/63/113, section II.B.9.

[16] See the comments of Kenya in document A/63/113, section II.B.10.

could be used instead, as in draft article 24 ("[w]hen part or parts of the territory of a State separate ...").

There is a contradiction between draft articles 16 and 20 with regard to withdrawal of nationality by the predecessor State. The texts should be harmonized, so that nationality cannot be withdrawn by the predecessor State until the person concerned has been granted nationality by the successor State.

Kuwait

[Original: Arabic]

On the subject of article 20, dealing with attribution of the nationality of the successor State and withdrawal of the nationality of the predecessor State, the committee [of experts and representatives of the Arab States to coordinate positions for study of the declaration on the nationality of natural persons in relation to the succession of States] considered that the article did not take account of the laws of States that do not prohibit dual nationality or do not permit the withdrawal of their nationality from their nationals.

15. Article 21. Attribution of the nationality of the successor State

Belarus

[Original: Russian]

In article 21, we propose that, following the words "had the nationality of", the word "a" should be replaced by "at least one". This will, in our opinion, make the article applicable to all possible forms of succession of States in connection with the uniting of States.

16. Article 25. Withdrawal of the nationality of the predecessor State

Kenya

[Original: English]

Kenya recalled that it had previously commented on this article.[17]

Venezuela (Bolivarian Republic of)

[Original: Spanish]

In article 25, language along the lines of "the predecessor State may withdraw its nationality" would be preferable to "the predecessor State shall withdraw its nationality", because the current wording arbitrarily limits the possibility that the person concerned might acquire two nationalities.

[17] See the comments of Kenya in document A/63/113, section II.B.15.

C. Advisability of elaborating a legal instrument on the question of nationality of natural persons in relation to the succession of States, and the possible form of an instrument

Austria

[Original: English]

Austria would prefer, as already indicated in 2007[18] [...], to take into account the developments of State practice before making a decision on the elaboration of a convention. In this regard, Austria would like to suggest that a study might be undertaken by the secretariat of the Commission on current State practice on the topic in order to assist States in reaching a conclusion on the form that might be given to the draft articles.

Belarus

[Original: Russian]

The preamble to the draft articles notes that the General Assembly is convinced of the need for the codification and progressive development of the rules of international law concerning nationality in relation to the succession of States. In that regard, the Republic of Belarus is of the understanding that the purpose of codification in any field is to adopt the corresponding international treaty whose legally binding nature is universally acknowledged.

We believe that the final outcome of the work of the International Law Commission on succession of States in regard to nationality should be a multilateral international treaty which comprehensively regulates questions of nationality, including questions of the nationality of natural persons in relation to the succession of States. The conclusion of such a universal international treaty would, in our opinion, serve as the legal basis for establishing effective mechanisms to protect the right of each person to a nationality. As an interim measure, it would be fitting to adopt the draft articles as a practical guide, approved by the General Assembly in a corresponding resolution. When there is consistent practice by States, guided by the provisions of such an instrument, that will serve as an indication that the relevant rules of international customary law are taking shape, which in turn will allow for consideration of the question of codifying the said rules through the conclusion of an international treaty.

It should be noted that, in the succession of States, the rights of interested persons will not be appropriately protected unless both the predecessor State and the successor State are parties to the international treaty that includes the provisions of the draft articles, or unless the legislation of the States in question properly covers issues of the nationality of natural persons in relation to the succession of States, including the right of option.

Moreover, we believe that in regulating issues of nationality of natural persons in relation to the succession of States, international treaties concluded between States concerned by the process of succession should take priority. In that connection, we propose adding articles to the draft establishing that, in cases of succession of States, issues of the nationality of persons concerned may be governed by international

[18] See the comments of Austria in document A/63/113, section II.C.

treaties concluded between the States concerned. At the same time, such international treaties may establish other rules than those provided for in the draft articles.

Bulgaria

[Original: English]

The Government of the Republic of Bulgaria is of the view that the codification and progressive development of international law relating to the nationality of natural persons in relation to the succession of States could be regarded as a means towards ensuring greater legal certainty for the States as well as for the individuals. The Bulgarian Government considers in this regard that the elaboration of a legal instrument on the question of nationality of natural persons in relation to the succession of States, including the avoidance of statelessness as a result of a succession of States, is advisable.

Czech Republic

[Original: English]

The Government of the Czech Republic is of the opinion that the intended purpose of the articles is to provide States with useful and practical guidance, namely in drafting domestic laws and regulations in this area. Therefore, the form of a non-binding declaration seems to be fully sufficient and more practical in comparison with a legally binding instrument. Furthermore, a non-binding document provides the opportunity for addressing a broader range of issues than a convention which sets forth international obligations.

Moreover, the Government of the Czech Republic believes that, in comparison with a convention ratified by a small number of States, a generally acceptable declaration may enjoy greater authority and exert more positive influence on the legislation and practice of the individual Member States.

The Government of the Czech Republic is convinced that the purpose of the draft articles was achieved already by the adoption of General Assembly resolution 55/153 of 12 December 2000.

Kenya

[Original: English]

In addition, there was the issue of whether it would be prudent to have the codification of a legal instrument on the question of nationality of natural persons in relation to the succession of States and the avoidance of statelessness as a result of the succession of States. The International Law Commission's recommendation, recalled in the preamble of General Assembly resolution 55/133, was that the draft articles on this matter should be adopted as a declaration. Some States are in favour of these being adopted as a legal instrument. Opinion is divided on this matter. Furthermore, the adoption of the draft articles on the above-captioned matter would reflect stronger support for the protection of the rights of natural persons and nationality, as they are consistent with the general legal guidelines for the defence and protection of human rights.

Kuwait

[Original: Arabic and English]

As for the recommendation by the General Assembly to adopt the draft resolution in the form of a declaration, the State of Kuwait supports this recommendation.

In its provisions as a whole the declaration endeavours to regulate, on a legal and international basis, the problem of statelessness arising from some of the phenomena of international succession. Although the international precedents indicate that the problem only rarely arises, and that it has so far not become a significant factor, the international legislator has decided that in fact it is of importance to the international community as a whole.

It is internationally established that international instruments in the form of a declaration are regarded as being tantamount to guiding or advisory precepts; the same does not apply to international conventions, which are mandatory in nature, as has already been stated.

On reviewing the articles of the declaration under consideration we find that the general context of its provisions focuses on the exercise of options and the affirmation of the internal sovereignty of the State in all matters related to nationality, as well as on the strengthening of, and respect for, the will of persons concerned and their freedom to opt for their nationality whenever possible. Hence, there is no harm in regarding these principles, as long as they occur in the text of an international declaration that has been adopted with respect for its principles, as entailing only a moral rather than a legal obligation, inasmuch as it ultimately implies no international obligation on the part of the State of Kuwait.

Mexico

[Original: Spanish]

The draft articles prepared by the International Law Commission are considered acceptable insofar as they provide effective protection of the right of persons to a nationality. Accordingly, Mexico has no difficulty supporting the planned development of a legal instrument on this matter. However, it will continue to consider the question of the form that this international instrument should take.

Portugal

[Original: English]

[...] the question of ensuring compliance with th[e] limits [imposed by international law on the sovereign prerogatives of States in relation to the attribution of nationality] also relates to the final form and legal strength to be assumed by the draft articles. There appear to be three options: to leave the draft articles as an annex to General Assembly resolution 55/153; to adopt the draft articles as a declaration of the Assembly, as recommended by the International Law Commission; and to elaborate an international convention on the basis of the draft articles.

Portugal believes that, for the moment, the adoption of the draft articles as a declaration would be the most reasonable option, allowing the immediate and authoritative stabilization of a diffuse set of norms and practices, combining

codification with the progressive development of international law. However, the adoption of the draft articles as a declaration should only happen when broad support by States can be expected.

Slovenia

[Original: English]

The Republic of Slovenia is of the opinion that the rules regarding the nationality of natural persons in the case of succession of States should be in the form of a non-binding document. Such a document should also reflect modern practice and contemporary international standards. Bearing in mind that the issue of regulating the citizenship of natural persons in the case of succession presents one of the most challenging succession issues, the Republic of Slovenia advocates a progressive approach towards settling this issue that might also result in a legally binding document at a later stage. It furthermore believes that it is important, at present, to formulate a soft law document, containing clear and authoritative guidelines as a useful tool in dealing with this issue in practice.

Suriname

[Original: English]

It is of the utmost importance that in the formulation of any legal instrument, the right of every individual to a nationality is recognized and that States should take all appropriate measures to prevent persons from becoming stateless as a result of succession. In the case of succession, States should exert all efforts to provide persons with a nationality or they should take all measures so that persons do not lose their nationality. Furthermore, the legal instrument should include the possibility to change one's nationality. In conclusion, it is suggested that any legal instrument address the issues of family reunification, measures for family members and the avoidance of expulsion as a result of succession.

Venezuela (Bolivarian Republic of)

[Original: Spanish]

As regards the form that the draft articles should take, the opinions expressed in the observations made to date by States range widely; some have argued for a declaration, while others would prefer for them to be adopted in a binding international instrument (a treaty). The Venezuelan delegation could support the adoption of a treaty, as two other Latin American countries, Brazil and Ecuador, have done.

Lastly, it must be borne in mind that the international community has already adopted legally binding instruments on nationality, such as the Convention relating to the Status of Stateless Persons of 28 September 1954[2] and the Convention on the Reduction of Statelessness of 30 August 1961.[3] It would therefore be inappropriate to issue a declaration (soft law) on this topic.

Yemen

[Original: Arabic]

The Republic of Yemen believes that it would be appropriate to adopt principles and provisions to regulate the nationality of natural persons in relation to the succession of States, once their final version has been agreed, in the form of an international declaration adopted by the General Assembly.